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RESPONSIBILITY AND IRRESPONSIBILITY

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CRIME AND INSANITY;

A PAPER READ BEFORE THE

MONTREAL MEDICO-CHIRURGICAL SOCIETY,

BY THE PRESIDENT,

HENRY HOWARD, M.D., M.R.C.S., Eng.

(FEBRUARY 7TH, 1879.)

(From the *Canada Medical and Surgical Journal*, March, 1879.)

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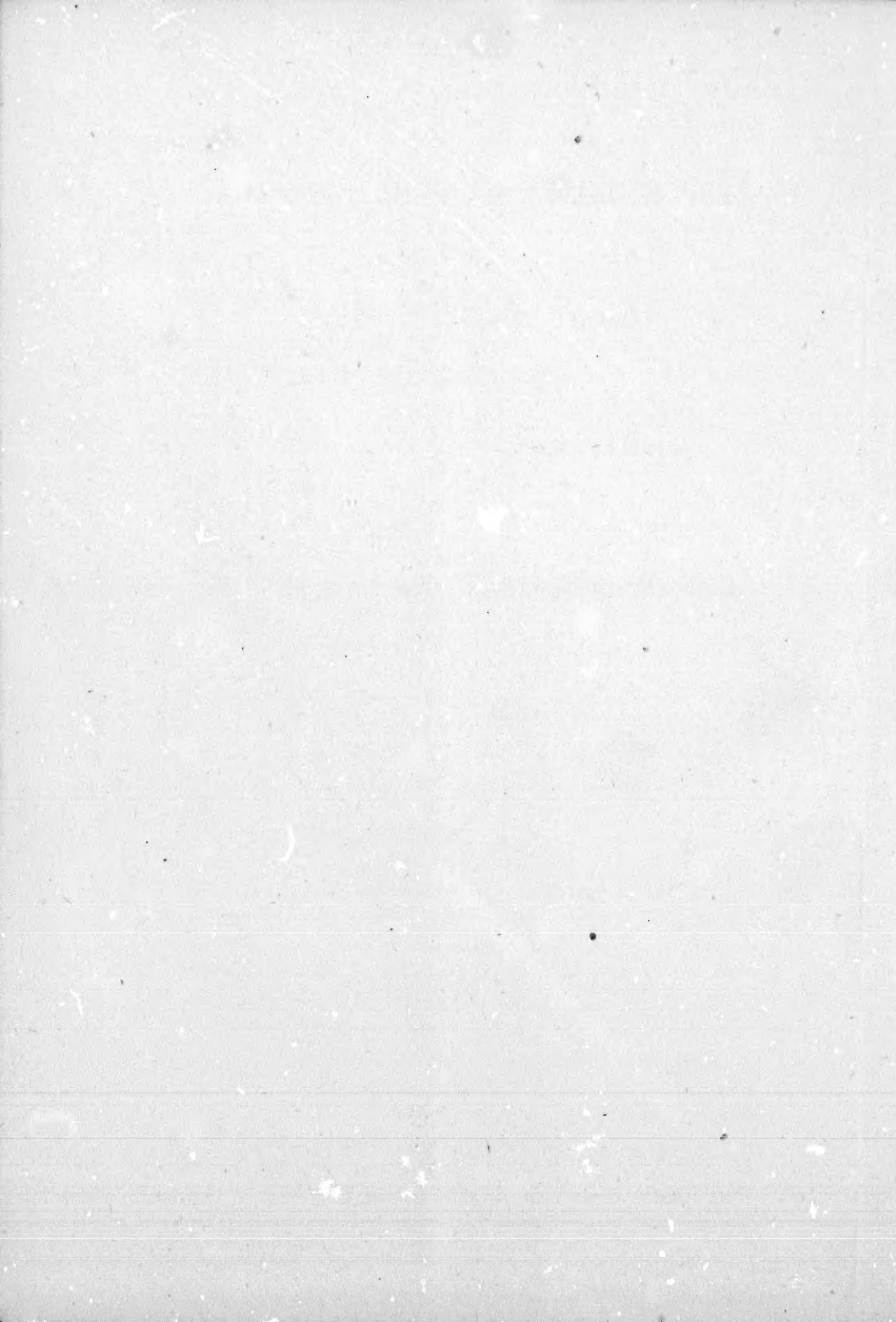
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[FEBRUARY 7TH, 1879.]

MR. CHAIRMAN AND GENTLEMEN,—Never since the history of literature, has there been so much written upon mental science and mental diseases as in the present day, and these writings are not by the rank and file of the profession, but by the officers. To name all would occupy too much of your time. I would, however, give the names of Maudsley, Clouston, Hach, Tuke, Savage, Bucknell, Creighton Browne, Ferrier, Hughlings Jackson, Brown Sequard, Eulenburg, Guttman, W. W. Ireland, and there are a host of French writers, besides the men outside of the profession, such as Emel, Du Bois, Reymond, Tyndall, &c.; yet, gentlemen, strange to say, perhaps there never was a time when mental diseases were so little known to, or studied by the medical practitioner. The reason is obvious. As civilization advanced, and science showed insanity to be disease, the treatment of the insane became more humane, and instead of this class being allowed to wander as outcasts about the country, asylums have been provided for those suffering from mental and neuralgic diseases, such as epilepsy, as well as for the imbecile and idiot. No one will deny but this is as it should be; but it has taken away all chance from the medical student and medical man of clinical study of the insane, as well as the study of the pathological ravages made by disease on man's nervous system. Generally speaking, for many very obvious reasons our insane asylums are too far from our cities to give medical students clinical instruction. Again, our asylums are such that a crowd

of medical students would derange the whole establishment, and be injurious to the patients. Again, the medical officer of an asylum—for example, myself, as at present situated,—would have no time to give clinical instruction. Now, gentlemen, I have often thought of this anomalous position of medical men, particularly since the late Order in Council in this Province—a very necessary order—compelling medical men, when giving certificates of insanity, to make a solemn affirmation to their certificates before a magistrate. If you knew as much, gentlemen, as I do, you would see how necessary that Order in Council was. Well, I have, as I have said, often thought of this your position, and as to how it could be remedied, so as that your medical students could get clinical instruction on mental diseases. My idea is that if you made arrangements in your hospital, say for four or six patients, one-half male, the other half female, that, by petition, the Provincial Government could be got to consent to allow me, or who ever takes my place after me, to transfer, from time to time, patients from the asylum, for clinical purposes, to your hospital. I do not mean to enter into details, but merely to point out to you that something might be done. If representatives from the medical schools would wish to speak to me on the subject, I shall be most happy to enter into further details. I am convinced, gentlemen, that something should be done, by which the general medical practitioner should have more knowledge than he now possesses of mental diseases.

Dr. Maudsley, speaking of the duty of the physician, says : “ Recognizing the obvious difference between him who *will not* and him who *cannot* fulfil the claims of the law, it is their function to point out the conditions of disease which constitute incapacity.”

Gentlemen, I am going to ask you to join with me to do that which Dr. Maudsley says it is our duty to do, therefore I will offer no apology for occupying a short portion of your time this evening in considering a question which I have brought, in one form or another, before you very frequently within the last four years. The Dominion Parliament is now about to assemble, therefore it is a proper time for this representative society to

express its views, and ask for legislation to define the responsibility or irresponsibility of the criminal; to ask the legislature to define, on some scientific ground, where responsibility ends and where irresponsibility begins. That society has a right to make laws for its own preservation, is a truth that no sane man can deny, but, that these laws should be based upon justice and benevolence is just as great a truth, which no sane man can deny. From the earliest history of law-makers down to the present day, we find that as mankind has progressed in scientific knowledge,—in fact, as man's intellectual and moral faculties have become more developed, and man, in consequence, has progressed to a higher state of civilization, laws have been more generally based upon justice and benevolence. But, gentlemen, man is, as I have already said, a progressive animal; all history, and science (which is more trustworthy), proves this fact. When we draw the difference between the peoples of the pre-historic age, and the peoples of the present day; when we draw the distinction between the peoples of the historic age and the present day; or, to come still closer, between the peoples of the present day,—for example, between the European and the African, between the European and the Cannibals of the South Sea Islands,—we must admit that man is a progressive animal. Perhaps, gentlemen, in some millions of years the descendants of these Africans and South Sea Islanders may become, by the natural law of progress, as far advanced as we are now, and our offspring may be so far advanced that crime and insanity would be unknown amongst them. Judging from the past, this is but a natural conclusion to come to with regard to the future. Not, however, being a prophet, nor the son of a prophet, I do not want to speak of the future, but of the present. I want to speak of man just as we medical scientists find him; and how do we find him? We find him differing as much in his mental organization—that is, in his intellectual and moral faculties,—as we find him differing in personal appearance. All men recognize the fact of men differing in their intellectual faculties from the different degrees of idiocy, different degrees of imbecility, and different degrees of intelligence; and society,

as a whole, makes no protest when science points out the fact that this intellectual faculty, whether it be or be not cultivated, is dependent upon a man's material brain. But the moment we come to declare the same of the other portion of a man's mental organization—that is, of his moral faculties,—then all the teachers of religion, and all those versed in law, raise one universal cry against us, and we hear on all sides the terms revolutionists and materialists. Nevertheless, gentlemen, it is as true of the moral faculties as it is of the intellectual, and, as you know, admits of as clear anatomical, physiological and pathological proofs. Yet, I admit that all scientific truths are of themselves revolutionary, but they produce a revolution very much to be desired, a revolution that advances civilization; it is, in fact, a daily revolution, going on so gradually and so noiselessly that men hardly observe it; indeed, they do not observe it at all in its growth, and are surprised to find themselves compelled to admit the truth of a scientific fact that they had never dreamt of. As to its being materialistic, of course it is. The mental scientist don't pretend to treat of anything else but matter; we see effect and we look for cause; we see that men differ intellectually, and we find the cause in the cortical substance of the frontal portion of the hemispheres of the brain. We find men differ morally, and we find the cause in the cortical substance of the parietal and occipital portions of the hemispheres of the brain. We find that irritation of the frontal cells, renders the most intellectual man a raving maniac; that irritation of the parietal cells, renders the most honest man a pick-pocket; and that irritation of the cerebral cells, renders the most pure being a filthy, impure creature. Now, if these be facts, and facts they are, we have no trouble in recognizing another fact, and that is, that every man, in virtue of some abnormal state of his moral faculties, has in him a criminal neurosis,—some to a greater, and some to a less degree. Just as men differ in degrees of intelligence, so they differ in degrees of morality. These are most reasonable, simple facts, gentlemen; nothing contrary to our reason, nothing contrary to our comprehension, nothing contrary to natural

laws ; indeed, I conceive one of the great difficulties in the way of men receiving these scientific truths is their simplicity. There is something yet remaining in man that makes him like the mysterious and cling to the inexplicable. Writers of fiction know this well, therefore they always write so as to mystify their readers. This abnormal state of man's moral faculties, which mental scientists call a criminal neurosis, and which we account for physically, others call by the terms, his sinful nature, his criminal nature, his rebellious nature, &c., and the cause they assign for it is the consequence of original sin. Well, I see here no cause of quarrel ; all admit that the evil is there, and what was the first or original cause of this unhappy state of man is of but little consequence so long as we recognize the fact that man's criminal neurosis, as he is to-day, is due to a physical cause, and that cause is an abnormal or imperfect state of his moral faculties ; whether his soul has anything to do with the matter or not is of no consequence to us so long as we treat the disease physically. But, say our law-makers, our lawyers, and our religious teachers, every man must be held responsible for his acts. The scientist here joins issue and says every man must be held responsible to a degree, his degree of responsibility depending upon his degree of intellectual and moral faculties and his degree of controlling nerve power. The idiot, imbecile, maniac, and morally insane are not responsible at all, and the criminal's responsibility must be judged by the greater or lesser degree of his moral faculties, the degree of his criminal neurosis, and there are some of the criminal class of society whose neurosis is so exaggerated, so incurable, that they are not a bit more responsible than are the morally insane ; the habitual drunkard, for example. And here I consider the best time to define for you the difference between moral insanity and what is understood, or what I call a criminal neurosis, or, if you will, moral depravity. I would define moral insanity to be where a man has had a sound moral organization and sufficient nerve control to guide his moral acts, and where by reason of disease or some accidental circumstances, either from reflex action, from functional derangement, or lesion of the parts, or disease of the

vascular system, &c., his mental faculties become altogether changed, and he loses power over his moral acts from the loss of nerve control. This man's will may be to do right, but he has no nerve controlling power to resist his impulse ; and sometimes, to prevent himself committing a crime, he will commit suicide, choosing, as he conceives, of two evils the least. This is what I call moral insanity, and in such a case the intellect may be unclouded, and the miserable unfortunate know well that he is no longer a moral, but an immoral man ; and he is a most miserable man, always accusing himself, although he knows he cannot help himself. Yet, by our inhuman and unscientific laws, such men are hanged, that is, judicially murdered ; and the righteous man whose moral faculties are sound, and whose moral faculties are like an iceberg, says : " Serves him right ; moral insanity, indeed ! hang all such rascals ; these doctors and scientists, by and by, will do away with all responsibility."

I will now define what I mean by a criminal neurosis. I have said that every man has it more or less, but some have so much of it that they are hardly responsible for their acts. These are they that are begotten, conceived, born and brought up in crime, generally the offspring of depraved and debauched parents. They differ from the morally insane, inasmuch as they never had a sound, moral organization ; their moral organization from their birth has been deformed ; they never knew good ; evil to them is good. They are as incapable of reasoning as a wild horse ; they cannot recognize the rights of society ; they are Ishmaelites—their hand is against every man. If they have controlling nerve power, they don't know how to use it, or if they do, they use it for their own vile ends. These men never regret an evil deed, because they see no evil in their act. They are a law unto themselves. They are only in a very slight degree removed from the lowest brute, either intellectually or morally. And these men we punish by hanging and whipping, &c. We treat them also as responsible beings, and still crime goes on, and the criminals still live in our midst. Then the righteous say : " Well, if he had listened to the voice of God, if he had

listened to the teachings of religion, if he had controlled his evil desires, his evil passions, &c., he would have been a different man." Of course he would, but he didn't; he had no desire to do so. He acted exactly in accordance with his nature; he acted in obedience to his criminal neurosis, in obedience to his abnormal moral faculties; and for all the example it is to another of his sort, we might just as well hang a dog as hang such a criminal.

Gentlemen, you know, and I know, and all the world knows, that the only remedy that has been ever tried for the prevention of crime has been punishment, and this punishment has been meted out to all as if all were equally responsible for their acts. This, to say the least, was unscientific, and consequently unjust, and punishment, gentlemen, has been proved a failure for the prevention of crime, or for the cure of the criminal class of society. Crime continues, and the criminal classes continue.

There is no man recognizes more than I do, as I have already said, the right of society to enact laws for its own preservation. Moreover, I fully recognize the right of society to inflict punishment, even capital punishment, for crime if it thinks well so to do; but I deny the right of society to treat all criminals as if all were equally responsible, or as if all were to some degree responsible. If punishment has to continue, and I suppose it will, for the present at all events, I would have men punished, not according to the enormity of their crimes, but in accordance with the moral responsibility with which they have been endowed; and where I found an irreclaimable, an incurable criminal, I would treat him as I would an incurable maniac, and lock him up for life, not for punishment, but for the protection of society, and to put a stop to the procreation of such animals.

What next would I have? I would have the Legislature recognize the fact that poverty was the great *objective* cause of crime, and that if we must of necessity have different grades of society, if we must of necessity have poor, we must not of necessity have a pauper class, from which class, as a rule, springs the criminal classes. I would have the Legislature bend their whole energy to do away with pauperism, and

thereby diminish crime and the criminal classes. But you will ask, how is the law to draw the distinction between the men of different mental organizations? How is a judge, before he passes sentence, to know a man's mental calibre or a man's moral faculties? Let the law once be made and the medical profession will soon provide men capable of doing that work. But we need not trouble ourselves too much about the question of criminals at present. There is not much prospect of the Legislatures of the present day troubling themselves about the matter. Such questions as these are rarely taken up by men of strong party proclivities. Besides we would have a strong power against us, the theologians and lawyers. You will naturally ask why, then, am I writing so much upon the subject? I answer, some men lay only the foundation; other men build thereon. I hope that in time these other men will appear and build upon the foundation that I have been trying to lay. But if I have no hope to get legislation upon the criminal class of society, I have strong hope of having legislation upon the question of insanity, if for no other reason than to put a stop to our judges making themselves ridiculous before the whole world, in their different definitions of what causes irresponsibility in the insane. Could there be anything more absurd than to find a Judge in the Province of New Brunswick making a statement the very contrary of that made a few months before by "the Lord Chief Justice of England," "the Judge instructed the jury that unless there was an entire lack of knowledge to distinguish between *right* and *wrong*, they could not but find the prisoner guilty," the Lord Chief Justice of England said: "I coincide most cordially in the proposed alteration of the law, having been always strongly of opinion that, as the pathology of insanity abundantly establishes, there are forms of mental disease in which, though the patient is quite *aware* he is about to do *wrong*, the will becomes overpowered by the force of irresistible impulse." Here, gentlemen, is a difference, but is the Provincial Judge to be found fault with? I certainly think not; the fault lies with the Dominion Government for never having defined where respon-

sibility terminated. I will now, for your information, and in support of my views, given before this Society three years ago, and for the information of our Legislature, quote the highest authority in England, both legal and medical. In *The Journal of Mental Science* (edited by Drs. Mandsley and Clouston) for April, 1878, page 22, is the following from the pen of David Nicolson, M. D., Deputy Superintendent State Criminal Lunatic Asylum, Broadmoor, England, "a bill introduced into the House of Commons in 1874, by Mr. Russell Gurney, with the view of amending the Law of Homicide led to the appointment of a committee, before which most important and hopeful evidence was given. The following evidence of Lord Justice Blackburn speaks for itself, and virtually displaces the legal dictum of right and wrong," "We cannot fail to see that there are cases where the person is not clearly responsible, and yet knows right from wrong. I can give you an instance. It was in the case of that woman of whom I was speaking, who was tried for wounding a girl with intent to murder. The facts were these: The woman had more than once been insane, the insanity being principally brought on by suckling her child too long, which was the cause that had produced it before. She was living with her husband, and had the charge of this girl, of about fifteen, who lay in bed all day; she was very kind to her, and had treated her very well; they were miserably poor, and very much owing to that, she continued to nurse her boy till he was nearly two years old; and suddenly, when in this state, she, one morning, about eleven o'clock, went to the child lying in bed, aged fifteen, and deliberately cut her throat; then she went towards her own child, a girl of five or six years of age, of whom she was exceedingly fond, and the girl hearing a noise, looked up and said: "What are you doing?" "I have "killed Olivia, and I am going to kill you," was the answer. The child, fortunately, instead of screaming, threw her arms round her mother's neck and said: "No, I know you would not hurt your little Mopsy." The woman dropped the child, went down and told a neighbour what she had done, that she "had killed

Olivia, and was going to kill Mary ; but when the darling threw its arms round my neck, I had not the heart to do it." She clearly knew right from wrong, and knew the character of her act. For some little time after that she talked rationally enough, but before night she was sent to a lunatic asylum raving mad, and having recovered she was brought to be tried before me at a subsequent Assize. She did know the quality of her act, and was quite aware of what she had done, but I felt it impossible to say she should be punished. If I had read the deposition in Magnantin's case, and said : " Do you bring her within that ? " the jury would have taken the bit in their own teeth, and said, " Not guilty on the ground of insanity," and I think rightly. She is well borne out by the following extract made from a statement sent to the Committee by the Lord Chief Justice of England (Sir A. Cockburn) : " As the law as expounded by the Judges in the House of Lords now stands, it is only when mental diseases produce incapacity to distinguish between right and wrong that immunity from the penal consequences of crime is admitted. The present bill introduces a new element, the absence of power of self denial. I concur most cordially in the proposed alteration of the law, having been always strongly of opinion that, as the pathology of insanity abundantly establishes, there are forms of mental disease in which, though the patient is quite aware he is about to do wrong, the will becomes overpowered by the force of irresistible impulse, the power of self control when destroyed, or suspended, by mental disease becomes, I think, an essential element of responsibility."

In the July number of the same journal (1875), page 258, is the following from the pen of Dr. Bucknill : " Responsibility depends upon power and not upon knowledge and feeling, and a man is responsible to do that which he *can* do ; not that which he feels, or knows it right to do."

Well, gentlemen, no matter how you, or others, may differ with me respecting a criminal neurosis, and that a man's moral responsibility depends upon his mental organization, there are none of you, with such authority on my side as I have quoted

for you, but will agree with me, that it is full time for us to have legislation upon responsibility in the insane. And that law should decide, as it has in England, that a person may know the difference between right and wrong, and yet be irresponsible for their acts, their will being overpowered, and their self control destroyed by the force of irresistible impulse. Yes, it surely is time that this important question should be settled ; it is time that the law should define where irresponsibility ends, and responsibility begins.

I have brought this evening, before you three distinct subjects for consideration. The first, as to how the Medical Schools shall provide means to give students clinical instructions upon mental diseases. Well, gentlemen, if your different Professors will come to some understanding amongst themselves, I will be happy to aid you in carrying out your plans. The second subject is with regard to the criminal class of society ; strong as my convictions are upon the unscientific treatment of this class of society, I would not ask you to take any move in the matter at present. There are too strong prejudices to overcome ; better wait till the people are better instructed in science, pressing the question at present would do more harm than good, at least that is my opinion. But with regard to the third subject, viz., to urge upon the Legislature the necessity of legislating on the subject of responsibility and irresponsibility in the insane. I ask you if you agree with me, that we require such legislation, to prepare petitions to the Legislature praying for legislation, and setting forth the reasons why our prayer should be acceded to. In fact that the law should be, "that a man is responsible for what he *can* do, not for that which he feels, or knows, it right to do." Or, gentlemen, if you see any more simple way to bring the matter before the Legislature, do so ; but do something, if it were only to show, as scientists, we are alive to the necessity of some change being made in the law of lunacy.